

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4052 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

RABARI HAKKA JETHA

Versus

DIST.MAGISTRATE JUNAGADH

Appearance:

MR SATISH R PATEL for Petitioner

MR.NEEGAM SHUKLA, AGP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 27.4.1996 passed by the District Magistrate, Junagadh whereby the petitioner has been detained under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 28.4.1996 and since then the petitioner is under detention lodged at Sabarmati Central Jail,

Ahmedabad.

The present Special Civil Application was filed in this Court on 14.6.1996 and on 17.6.1996 Rule returnable for 9.7.1996 was issued. So far neither any reply has been filed by the respondent nor any affidavit in rejoinder has been filed by the Detaining Authority.

The grounds enclosed with the detention order show that six criminal cases under Prohibition Act for the offences under IPC Chapter 16 and 17 were registered against the petitioner out of which five are pending trial and one was pending for investigation at the time when the impugned order of detention was passed.

The Detaining Authority after taking note of these allegations of these six criminal cases recorded that the petitioner was a headstrong person, was bearing innocent persons, was threatening them, using deadly weapons, extorting money and creating atmosphere of fear and terror and was engaged in the business of manufacture of sale of country liquor and had thus become problem for the public order. Besides this the statements of five witnesses were also taken into consideration about the petitioner's antisocial activities and the statements made by the witnesses on 8.4.1996, 9.4.1996 and 10.4.1996. The detention order has been passed to prevent the petitioner from carrying on his criminal antisocial and bootlegging activities.

The detention order has been challenged on more than one grounds. The learned counsel for the petitioner laid stress on the ground that the allegation and material relied upon against the petitioner even if taken to be true do not make out a case of breach of public order and at the most it is a case of law and order. The reliance has also been placed on the case of decision in the case of M.J.Shaikh Vs. M.M.Mehta reported in 1995(2) GLR Pg.1268 [Mustakmiya's case] and the decision of this court rendered in Special Civil Application No. 3879 of 1996. It has also been submitted with reference to the averments made in para 18 that page nos. 44, 57, 61, 75, 79, 80, 85,86, 103,119 and 123 are illegible although reply has not been filed. Mr.Shukla has submitted that the documents which are said to be illegible is FIR and he has submitted that seven documents supplied to the petitioner are illegible.

I have considered the submissions made on behalf of both the sides. I find that this Court's decision dated 4.10.1996 and the law laid down in 1995(2) GLR Pg.

1268 applies with full force in the facts of this case and the detention order has appeared to have been passed on the ground of breach of law and order and therefore no case of breach of public order can be said to have been made out.

Besides this factual position with regard to supply of illegible documents to the petitioner has remained uncontroverted rather admitted with regard to the seven documents and at least in one case police investigation was pending and yet the copy of the FIR supplied to the petitioner has been admitted to be illegible. For the reasons aforesaid, the detention order cannot be sustained in the eye of law and deserves to be quashed and set aside.

Accordingly, this Special Civil Application is allowed. The impugned detention order dated 27.4.1996 passed by the District Magistrate, Junagadh is hereby quashed and set aside. The petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.
